2001

John Price v. Research Industries Corporation : Brief of Respondent

Utah Supreme Court

Robert O Baldwin, James R Brown; Jardine, Baldwin and Brown; Attorneys for Appellant.
Louis M Haynie; Attorney for Respondent.

IN THE SUPREME COURT

OF THE STATE OF UTAH

JOHN PRICE, an individual,

Plaintiff-Appellant,

vs

RESEARCH INDUSTRIES CORPORATION, a corporation,

Defendant-Respondent.

No. 14230

RESPONDENT'S BRIEF

Brief in support of judgment rendered by the Honorable Marcellus K. Snow, Third Judicial District in and for Salt lake County, State of Utah.

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STATEMENT OF CASE

On the 31st day of October, 1968, the Defendant sold to the Plaintiff 10 acres of land and contracted to front the land with a street which would contain curbs, gutters, asphalt paving, water and sewer, all to subdivision standards. Thereafter, the Defendant Research completed all the street improvements mentioned in the contract and the Plaintiff Price built two large buildings fronting on said street, connected to the sewer and water facilities and sold the buildings. In 1973, after all the foregoing improvements were in, the Plaintiff built another building and because of his failure to obtain the sewer service that he desired in 1973, he brought this action.

DISPOSITION IN LOWER COURT

The Trial Court, having heard all of the evidence rendered judgment that the Defendant had fully performed all of the obligations which it had undertaken and that the obligations to provide sewer service and process sewage was not an obligation which the Defendant undertook to perform by the contract. Price made a motion for new trial; the same was denied and this appeal follows.

RELIEF SOUGHT ON APPEAL

The Defendant asks for affirmation of the judgment of the lower court.

STATEMENT OF FACTS

In October, 1968, the parties entered into an agreement covering 10 acres of land proposed to front along 2300 South Street in Salt Lake County, west of Redwood Road running from 2000 to 2200 West. Between 1968 and 1973 Price built a building for Rocky Mountain Bank Note Company and a building for Chain Pump Corporation, which was subsequently sold by Chain Pump to Tool Design, Engineering and Manufacturing Company. On the west of his property Price had approximately 2 acres remaining which became the Dow-Richardson property, the services to which Price encountered difficulties. The first two buildings connected to all the services provided at 2300 South Street in accordance with the contract.

In 1973 when Price attempted to secure services for the Dow-Richardson building his employees through John Price and Associates (a corporation which somehow emerges as the party in interest rather than John Price individually, a fact not evident from the record) and although no official application was ever made for sewer services, Price constructed a holding tank in front of the property to collect sewage until such time as Granger-Hunter Improvement District permitted him to tie into their line in the street. Prior to 1973, 2300 South Street fronting the entire length of the Price property had been dedicated to Salt Lake County and all sewer and water lines within the street became the property of the Granger-Hunter Improvement District, the improvement district which serves this entire area.

Although Granger-Hunter Improvement District had permitted the connection of all prior buildings, their local manager, Jerry Larsen, informed the Price employees over the phone that he would not allow them to connect because of some problems the District was having with the Salt Lake County Board of Health. According to Mr. Larsen the construction of the freeway west of the subject property had required the District to construct a new lift station which was not yet operational and Mr. Larsen did not want any more sewage dumped into his main lines until such time as new lift stations would be functional. Mr. Larsen specified in his testimony that he was not the ultimate authority for the District and that he was expressing his decision concerning the matter.

In any event, the Plaintiff Price caused a concrete holding tank to be placed in front of the Dow-Richardson property and through his own bookkeeping stated that expenses connected with the project exceeded $3,000. Thereafter, John Price brought an action against Research Industries Corporation claiming that said corporation is responsible for his failure to negotiate sewer services with the Granger-Hunter Improvement District in 1973.

ARGUMENT

I

RESEARCH FULLY PERFORMED THE CONTRACT

In 1968 Salt Lake County by it's ordinances had specified certain types of street profiles - curbs, gutters, etc. for a subdivision. Salt Lake County was not and is not in the sewer

business and no general specifications are provided by the County for a sewer, however it should be noted that the term "standards for a subdivision" would be a limiting factor not a broadening factor when it comes to a sewer line. The smallest sewage collection facilities are permitted in subdivisions which have limited sewage requirements, whereas industrial requirements for sewage may include 18" lines and such other lines as may be necessary to collect sewage from rendering plants, bottling plants, and other high capacity industrial dischargers. By the term in the contract the parties meant to include the minimum type sewage collection system provided in the Salt Lake County subdivision. All of the buildings constructed by Price require only light sewage requirements or small lines. These lines were duly installed in front of all the buildings which were built by the Plaintiff and into which the buildings discharge their sewage. The opening statements of Plaintiff's counsel explain to the Court and the record is clear that the contract did not embrace any type of sewage treatment service. No subdivision has its own sewage treatment plant; rather laws of the State of Utah (17-7-11 et seq.) enable Improvement Districts to provide these types of services and no subdivider has yet, not will be, permitted to enter into a contract which would provide for sewer services. The only requirement which was placed upon the Defendant by the provision of paragraph 7 of the contract was for the installation of a sewer line which would be serviced by the proper district. This was done and was accomplished long before the facts alleged in the Complaint ever came to being.

II

PLAINTIFF'S REMEDY LIES WITH A THIRD PARTY

In 1973, long after the sewer system along 2300 South was installed and functioning, the Granger-Hunter Improvement District decided to make improvements in its system. This decision was made because a new freeway (I-215) cut through the District and because they desired to provide services to a larger area. In order to implement these improvements they planned additional lines and lift stations (the area is flat and sewage must be pumped) and in one instance asked the Defendant to assist in the costs. Also, during this interim period it becomes obvious from the record that the local manager, Mr. Larsen, did not want to provide additional services. This decision did not involve the Defendant. That the Plaintiff knew these facts appears from the testimony of his agent, Mr. Hampshire when he testified to that effect (see Tr. 57 l. 10-18). Obviously the confusion is confounded by Plaintiff's counsel when he makes the statement to the Court that the Defendant is responsible for providing a sewer system (Tr. 60 line 13). The Plaintiff did very little, however to receive services from Granger-Hunter. They never even made formal application to the District for services (Tr. 58 l.30; Tr. 59 l. 1-5); perhaps had they done so, the services would have been provided. At this particular time the solution lay exclusively with the District.

Plaintiff's Exhibit 7 which was introduced in support of their case contains the following paragraph: "Granger-Hunter

Improvement District is in the process of constructing a large lift station near Decker Lake, which will pump the sewage from this area to the treatment plant east of Redwood Road. Although this plant is under construction, it will be sometime yet before it is completed. In the meantime, the District is doing everything they can to provide service by means of a temporary lift station which they have been working with for sometime. Due to problems to which they have encountered with the temporary lift station, they have delayed accepting new service in some areas which this temporary lift station will serve."

No place in the foregoing letter is it indicated that the problems which the Plaintiff is having have anything to do with the Defendant. The Plaintiff knew or should have known that his remedy lay with the District not with the Defendant.

III

THE DAMAGES ARE DISPUTED

In support of his claim for damages the Plaintiff introduced Exhibit P-5 which consists of some time sheets and a cover page. On cross examination the witness John Hampshire was unable to justify the amount of Seven Hundred Dollars charged by him except to say that he had made a few phone calls. The Hollingsworth charges were not supported and the relocation costs were unsupported estimates. Further cross examination of the Plaintiff's witness Martineau concerning the back up data to support his conclusions produced his admission (tr. 76 line 29) that except for labor

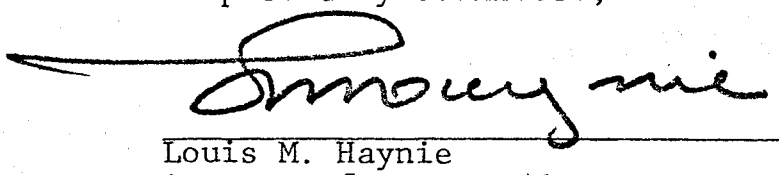
figures, nothing in the conclusions could be supported.

The reasonableness of the attorneys fees was not admitted. The transcript merely shows that there was a stipulation of what the testimony of the Plaintiff's counsel in that regard would be.

CONCLUSION

The Defendant is not in the sewer service business; a fact well known to Plaintiff at the time of the 1968 contract. Defendant's obligation to provide "sewer" improvements was to provide main lines in the street and secure an agreement by the proper district to commence service of those lines. The Defendant did not by agreement become a guarantor of the continued performance by Granger-Hunter Improvement District. The other points raised by the Brief need no further comment; the judgment of the lower court should be affirmed.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that I mailed two copies of Defendant-Respondent's Brief in the above entitled matter to Jardine, Baldwin and Brown, Attorneys for Plaintiff-Appellant, at 79 South State Street, Suite 700, Salt Lake City, Utah 84111, postage prepaid, this 19th day of November, 1975.